

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK
ROCHESTER DIVISION

IN RE

FLOYD EUGENE BUCKLEY AND EVELYN
GRACE BUCKLEY

DEBTORS

HEARING DATE: January 24, 2019

HEARING TIME: 10:00 AM

HEARING PLACE: Rochester

CHAPTER 7

CASE NO. 18-21238

JUDGE: Paul R. Warren

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY
PURSUANT TO BANKRUPTCY RULE 4001 AND 11 U.S.C. § 362(d)
DUE TO A LACK OF ADEQUATE PROTECTION (AND A LACK OF EQUITY)
PURSUANT TO 11 U.S.C. § 361**

Nationstar Mortgage LLC d/b/a Mr. Cooper, ("Secured Creditor") by and through its attorneys, Shapiro, DiCaro & Barak, LLC, makes application for an Order vacating the automatic stay pursuant to 11 U.S.C. § 362(d) and Bankruptcy Rule 4001 due to a lack of adequate protection pursuant to 11 U.S.C. § 361, and in support thereof, states as follows:

1. Debtors filed a petition for relief under Chapter 7 of the U.S. Bankruptcy Code on or about November 30, 2018.
2. According to the Debtor's Statement of Intention, the Debtor intends to surrender the property. See attached as Exhibit "D".
3. Nationstar Mortgage LLC d/b/a Mr. Cooper is a Secured Creditor of the Debtors by virtue of a note executed by Debtors on January 25, 2010 and given to Bank of America, N.A. whereby Debtors promised to repay the principal sum of \$83,558.00 ("the Note"). To secure the repayment of the Note, Debtors granted Mortgage Electronic Registration Systems, Inc. as nominee for Bank of America, N.A. a security interest (the "Mortgage") in the Property known as 6880 Boot Jack Hollow Road, Bath, NY 14810 (the "Property"), which was duly recorded in the Steuben County Clerk's Office on January 27, 2010 in Book 3212 Page 45. Copies of the

Mortgage and Note (collectively known as the "Loan") are annexed hereto as Exhibit "A". The Loan was assigned to Secured Creditor as memorialized by instrument dated May 28, 2014 and duly recorded on June 10, 2014. A copy of the Assignment of Mortgage is annexed as Exhibit "B".

4. Debtor defaulted under the terms of the Note & Mortgage for failure to make payments when due.

5. The amount now due under the mortgage is as follows:

6 Defaulted Monthly Payments at \$733.64 each (July 2018 through December 2018)	\$4,401.84
Property Inspections	\$285.00
Total Delinquencies	<hr/> \$4,686.84

6. The principal balance due on the Note secured by the Mortgage is \$71,118.84 and the payoff balance on the Mortgage is approximately \$73,478.15.

7. According to the Debtors' Schedule D, the value of the Property is \$90,000.00. A copy of the Debtors' Schedule D is annexed as Exhibit "C".

8. By failing to make mortgage payments, Debtors have failed to provide Secured Creditor with adequate protection for its interest in the Property.

9. The Secured Creditor requests that attorney fees in the amount of \$350.00 and costs of \$181.00 be awarded in bringing this motion if it is granted by default.

10. It is respectfully submitted that good cause exists to vacate the automatic stay of 11 U.S.C. § 362 to allow Secured Creditor to maintain a foreclosure action on its mortgage.

11. Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase order, invoices, itemized statements of running accounts, contracts,

judgments, mortgages, and security agreements in support of right to seek a lift of the automatic stay and foreclose if necessary.

WHEREFORE, Nationstar Mortgage LLC d/b/a Mr. Cooper respectfully requests that an Order be granted vacating the automatic stay as to allow Secured Creditor to exercise its rights pursuant to the Note and Mortgage and applicable state law including but not limited to permit the commencement, resumption or maintenance of mortgage foreclosure proceedings with respect to the Property, and for such other and further relief as the Court may deem just and proper.

Dated: December 20, 2018

Nicole DiStasio

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